

**Cody, Karen**

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**From:** Jackson, Brad  
**Sent:** Wednesday, April 16, 2014 12:42 PM  
**To:** Cody, Karen  
**Subject:** FW: EPA's Draft Data Letter - Initial Response

**From:** Sheridan, Kevin [<mailto:ksheridan@westlake.com>]  
**Sent:** Wednesday, November 27, 2013 10:21 AM  
**To:** Jackson, Brad  
**Cc:** Sheridan, Kevin  
**Subject:** EPA's Draft Data Letter - Initial Response

Brad,

We have reviewed EPA's draft letter concerning data use and PolyOne's proposed revisions. As an initial comment, PolyOne's proposed revisions are not acceptable because PolyOne seeks to change the substance of EPA's letter concerning, among other things, the key issue driving the current dispute. PolyOne revises EPA's letter so that the letter indicates that EPA has expressed concerns over the validity of third party data.

EPA has not expressed concerns over the validity of third party data in the past nor does EPA question the validity of third party data in the draft letter. Instead, EPA states that that third party data is valid and that the Respondents should consider that data when delineating contamination. In fact, EPA's draft would permit the consideration and use of third party data, such as the data collected by Geotrans on behalf of PolyOne as well as the "X series" of boring drilled by Westlake in 2009. We are now mired in a dispute because PolyOne wants to preclude any consideration of that data when such data indicates a lack of NAPL. For example, PolyOne refuses to allow the inclusion of negative dye tests in the NAPL delineation tables being developed for the RI, even when the dye tests were performed by PolyOne's consultant or by Bernie Kueper. (Dr. Kueper performed the dye tests for the X series of borings in 2009. As you know, Dr. Kueper trained the RI field teams in how to perform dye tests.)

As I stated to you yesterday and many times in the past, Westlake reiterates that it is not the party that is proposing to exclude any data from consideration. Instead, it is PolyOne that is attempting to exclude consideration of data, even when the data was collected by PolyOne itself in an effort to assert its own interests. (Such as PolyOne's steadfast refusal to allow Westlake to include certain Geotrans data in the data set that will be considered for NAPL delineation.)

We wanted to get this initial response to you quickly for your consideration. We will follow up in the near future with a more complete response to your letter.

Regards,  
Kevin

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\*\*\*\*\*A Fortune 1000 Company in 2013\*\*\*\*\*

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